



2003 Assembly Bill 149 – Revisions to Exemption Statutes
Testimony of State Representative Sheryl K. Albers before the Assembly Committee
on Ways and Means
June 11, 2003

Thank you, Chairman Lehman, for the opportunity to discuss AB 149, a bill that would provide for much needed updates to our exemption statutes.

This bill started out as an attempt to provide a long-overdue inflation correction to the homestead exemption. Wisconsin's homestead exemption has not been updated since 1986. In the last seventeen years, the exemption has lost over 40% of its value, and has become a huge obstacle for our low-income families.

Those of us who represent rural areas are acutely aware that financial hardship often occurs through circumstances beyond an individual's control, especially when it comes to family farms. Wisconsin farmers are routinely subject to poor weather and market forces, for instance. Try as they might, there is little that one individual can do to influence either of those factors. The loss in purchasing power that has resulted from the deterioration of this exemption's value jeopardizes their ability to acquire a new home after their finances are in order.

Upon circulating the original bill for cosponsorship, I was contacted almost immediately by Len Levenson, a member of the Bankruptcy, Insolvency, and Creditors Rights Board (BICR) with the State Bar of Wisconsin. Len explained to me that the Board had undertaken a comprehensive review of exemption statutes and was looking

for a legislator to help them correct these deficiencies. After meeting with Len and discussing the matter further with the Bar, I agreed to offer these changes – all long overdue.

Dollar amounts on non-homestead exemptions were last revised effective May 1990 – over thirteen years ago. This is a stark contrast to the federal Bankruptcy Code, which is revised for inflation every third year. As time passes, our exemptions have slowly but surely lost their value. This loss in value is compromising the chances of more and more individuals and families who desperately want nothing more than to put their lives back together after declaring bankruptcy.

In addition to a number of inflation adjustments, this bill also corrects another deficiency: the inability of married Wisconsin residents to “stack” their homestead exemptions. Under current law, a married couple is entitled to the same exemption as an individual. In essence, marriage vows cut the value of the homestead exemption in half. This bill would eliminate the marriage penalty on homestead exemptions.

A couple currently living together but not married is already eligible for this arrangement. In fact, BICR is aware of married couples that have filed for divorce solely to shield their home from a judgment creditor. It shouldn't have to be this way. Married couples should be entitled to the same exemption they entered their marriage with.

It has been a pleasure to work with the State Bar of Wisconsin on this issue. This bill will help Wisconsin families who have suffered through this recent economic turbulence to get back on their feet and help get Wisconsin moving again. Thank you for the opportunity to testify this morning. I would be happy to answer any questions the committee may have at this time.

MEMORANDUM

To: Assembly Ways and Means Committee
From: State Bar of Wisconsin
Bankruptcy, Insolvency & Creditors Rights Law Section
Date: June 11, 2003
Re: Assembly Bill 149 and substitute amendment

The State Bar of Wisconsin and its Bankruptcy, Insolvency & Creditors Rights Law Section support a variety of revisions to Wisconsin's exemptions statutes. While Assembly Bill 149 as originally introduced does not include these provisions, all but one of the changes recommended by the State Bar have been incorporated identically into a substitute amendment introduced by Rep. Sheryl Albers. We thank Rep. Albers for her willingness to meet and work with us on these revisions.

This memo provides background information on the suggested revisions and then explains how Rep. Albers' substitute amendment treats those.

General Background

Exempt property is property that individuals can keep from execution (seizure) by judgment creditors or a bankruptcy trustee. Debtors are not allowed to exempt property from mortgages, voluntary security interests or statutory or tax liens.

Wisconsin exemptions are currently found under §§ 815.18-815.20. The purpose of these provisions is: "to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges."

Non-homestead exemptions were last revised in late 1980s, effective 1990, at which time it was anticipated that the amount would be revisited to keep place with inflation. That has not taken place.

The homestead exemption was last revised in April 1986, when it changed from \$25,000 to the present \$40,000.

Dollar amounts under the federal Bankruptcy Code exemptions are revisited every three years for changes in the consumer price index. Those are due to be adjusted on April 1, 2004.

All of the Wisconsin exemptions, but for the homestead exemption, can be doubled for a married couple. For example, if there is a \$5,000 exemption for consumer goods, that can be doubled to \$10,000 when a married couple is claiming the exemption in bankruptcy.

The homestead exemption cannot be doubled for a married couple, which creates a "marriage penalty" because other non-married couples who jointly own a home can both claim the \$40,000 exemption.

State Bar of Wisconsin Bankruptcy, Insolvency & Creditors Rights Supported Revisions

1) Business/Farm Property Exemption- included in substitute amendment

Increase the business/farm property exemption from \$7,500 to \$12,500 and to exempt a debtor's interest in a closely held business. The latter is generally referred to as the "tools of the trade" exemption and currently is only available to sole proprietors. The proposed revision is to provide equity and fairness to small business owners. Under current law only sole proprietors may take advantage of the "business and farm property" exemption. The new provision gives the small business owner whose business happens to be incorporated, for example, an exemption for his/her ownership stake, to the same dollar limit. [§ 815.18(3)(b) and added language under a sub(2)] The State Bar draft used the words "closely held business" instead of "limited liability company, partnership or corporation."

2) Consumer Goods Exemption – included in substitute amendment

Increase the consumer goods exemption from \$5,000 to \$10,000 [§ 815.18(3)(d)]. Current federal exemption for consumer goods is \$9,300 plus \$1,150 for jewelry. The proposed change reflects an adjustment for inflation and provides for more parity with the federal exemption.

3) Life Insurance Cash Value Exemption – included in substitute amendment

Increase the life insurance cash value exemption from \$4,000 to \$8,625 [§ 815.18(3)(f)]. The proposed Wisconsin change is to adjust for inflation and provide more parity between Wisconsin and federal law.

4) Motor Vehicle Exemption – included in substitute amendment

Increase the motor vehicle exemption from \$1,200 to \$2,575 [§ 815.18(3)(g)]. Current federal exemption for motor vehicles is \$2,775. The proposed Wisconsin revision is to adjust for inflation and correspond better with the current federal exemption.

5) Multiple Life Insurance Technical Correction – included in substitute amendment

Provide several technical corrections to life insurance [§ 815.18(3)(i)1]. In practice, multiple small life insurance policies have been declared exempt and the exemptions sustained. The proposed technical revisions clarify this to make it explicit in the Wisconsin statutes and to adjust for inflation and provide more parity with the federal exemption.

6) Clarification - Personal Injury Award Exemptions – included in substitute amendment

Increase personal injury award exemption from \$25,000 to \$40,000 to clarify this is for each personal injury bodily claim [§ 815.18(3)(i)c]. The proposed revision is to adjust for inflation and is also designed to codify unreported interpretations of existing law which have sustained

multiple exemption claims for personal injuries arising from different sets of circumstances. The intent is to allow multiple exemption claims for different accidents or other events triggering injuries, but not to allow multiple exemptions simply because numerous parties were involved in, say, a multi-vehicle collision. The State Bar's draft suggested using the words "a payment or payments not to exceed \$40,000 for each personal injury bodily claim."

7) Homestead Exemption – Alternative Approach

The State Bar proposed increasing the homestead exemption under § 815.20(1) in a manner that would eliminate the "marriage penalty" which exists under current law. As stated earlier, the homestead exemption cannot be doubled for a married couple, which creates a "marriage penalty" because other non-married couples who jointly own a home can both claim the \$40,000 exemption. The State Bar's proposal would have allowed for each spouse to claim \$40,000 each for a total of \$80,000.

Most state exemption laws and the federal exemption laws allow each spouse to claim an exemption in the homestead. The State Bar's proposed revision would bring Wisconsin's approach in line with that of most other jurisdictions and eliminate a perverse incentive (ie: penalizing married couples).

While the proposal will result in an effective doubling of the homestead exemption for married couples, a second reason for an adjustment is to recognize the effects of inflation. The amount of the homestead exemption in Wisconsin has not been changed since 1986. If adjusted for inflation, this equals roughly \$68,000 today, using a Consumer Price Index adjustment.

The substitute amendment as introduced increases the dollar amount of the homestead exemption to \$68,800 in accordance with the Consumer Price Index adjustment.

Halverson, Vicky

From: Gruber, Ryan
Sent: Wednesday, June 11, 2003 11:17 AM
To: Halverson, Vicky
Subject: Albers - AB 149 follow-up info

Vicky,

We talked further with the Bar, and you can let your boss know that he doesn't have to go through the whole rigamarole with germaneness. We're just going to make a few changes and redraft the entire bill. Because of the expanded scope, we'll probably also request that it be sent to Judiciary.

Ryan Gruber

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Will hold off on bill.
May want to follow-up
with Albers' office at some
point to check on bill's
status.